

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2736 - SB 2878

March 10, 2022

SUMMARY OF BILL: Requires that any contract entered into by the state, a political subdivision of this state, a public utility district, or a municipal or public corporation of this state, requires that at least one party involved in the building delivery system of a project warrant the annual energy use of all habitable conditioned space within a newly constructed building or substantially renovated building meet a predetermined energy use objective set by the public agency involved in the contract.

Requires that at least one party involved in the building delivery system provides a warranty, that, for a period of at least three consecutive years, starting with the date of certification of occupancy, the energy use objective required by the public contract will be achieved. If such objective is not achieved, the party providing such warranty will be required to reimburse the respective public agency for 75 percent of the cost difference of the measured energy use and the energy use objective.

Requires an energy use objective for new construction be at least 30 percent lower than the average energy use for similar buildings, as determined from the data and reports of the United States Energy Information Administration.

Establishes the following reimbursement policies applicable to such contracts:

- If the energy use objective is met, then the public agency shall reimburse the party providing the warranty at the rate of twenty-seven cents (\$0.27) per square foot of conditioned space for the three (3) years of the warranty coverage by the public agency.
- If the energy use is less than the energy use objective, then the public agency shall reimburse the party providing the warranty at the rate of twenty-five cents (\$0.25) per thousand British Thermal Unit (BTU) per square foot of conditioned space per year.
- If the energy use objectives are not met, then the public agency shall not reimburse the party providing the warranty.

Establishes that if a public agency is unable to find a party that will warrant the building's energy use objective, then the public agency is only required to set a predetermined energy use objective.

Following occupancy of a building, the respective public agency is required to designate an independent auditor to annually conduct a measurement and verification audit of measured

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energy use for the duration of each individual contract. Such audit may be conducted and prepared by a third party at the expense of the party involved in the building delivery system that provides the warranty.

Defines “party involved in the building delivery system” as a provider of: building design; engineering or construction services; or materials and equipment.

FISCAL IMPACT:

Other Fiscal Impact – This legislation could result in various impacts to state and local government; however, due to multiple unknown variables, any fiscal impacts cannot be reasonably determined.

Assumptions:

- Based on information provided by the Department of General Services (DGS), neither the Central Procurement Office (CPO) or the State of Tennessee Real Estate Asset Management Division (STREAM) have the expertise to predetermine energy use objectives, or how it is possible to arrive at any predetermined energy use objectives prior to entering into a contract for design of a new structure or a substantial renovation of an existing structure.
- Requiring a party involved in the building delivery system to warrant a building’s annual energy use would result in unknown amount of additional expenditures to the state, to be incurred at the time a contract is entered into or during the construction phase.
- Requiring an independent auditor to monitor energy use will result in an increase in expenditures, of which amount and timing cannot be reasonably determined.
- The cost for such audits will either be paid for by the state or by the warranty holder; however, the legislation does not specify which party will absorb such costs indefinitely.
- Depending on whether the audit show a decrease which meets or fails to meet the respective energy objectives, the warranty holder or the state would see additional expenditures, which due to multiple unknown variables, cannot be reasonably determined.
- This legislation could result in a decrease in energy costs to the state and local government; however, due to multiple unknown variables, any such decrease in state expenditures cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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